UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CHARLES JAMES BILLINGSLEY, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. LA CV 12-08390 VBF-JCG

ORDER

Adopting Report and Recommendation of United States Magistrate Judge and Denying a Certificate of Appealability

Pursuant to 28 U.S.C. § 636, the Court has reviewed the habeas corpus petition (Document ("Doc") 1), the respondent's answer and accompanying memorandum (Doc 8), petitioner's traverse (Doc 9), the Magistrate Judge's Report and Recommendation ("R&R") (Doc 17), the remaining record, and the applicable law, and has made a *de novo* determination. Neither party has filed objections to the R&R. The Court will adopt the well-reasoned R&R, dismiss the habeas petition without prejudice for lack of subject-matter jurisdiction, and decline to issue a certificate of appealability ("COA").

Absent a COA, "an appeal may not be taken from a final decision of a district judge in a habeas corpus proceeding or a proceeding under 28 U.S.C. § 2255." *See Chafin v. Chafin*, – U.S. –, 133 S. Ct. 1017, – (2013) (Ginsburg, J., joined by Scalia & Breyer, JJ., concurring); *see also* 9th Cir. R. 22-1(e) (appellants "shall brief only issues certified by the district court or the court of appeals") and 9th Cir. R. 22-1(f) (appellees "need not

respond to any uncertified issues"). The district court must issue or deny a COA when it enters a final order adverse to the applicant, *see* R. 11(a) of Rules Governing § 2254 Cases. The court must consider each claim separately, *see Mayfield v. Woodford*, 270 F.3d 915, 922 (9th Cir. 2001) (citation omitted), which means it may grant a COA on one claim and not on others.

In practice,"[i]t is a 'rare step' for a district court to issue a COA," *McDaniels v. McGrew*, 2013 WL 4040058, *3 (C.D. Cal. Aug. 8, 2013) (Fairbank, J.) (quoting *Murden v. Artuz*, 497 F.3d 178, 199 (2d Cir. 2007) (Hall, J., concurring in judgment)); *accord Ruiz v. US*, 2014 WL 1487742, *8 (E.D. Cal. Apr. 15, 2014) (Ishii, Sr. J.) ("The issuance of a COA is 'a rare step.'") (likewise quoting concurrence in *Murden*). A COA may issue only if "the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). "The Court is mindful that it 'must resolve doubts about the propriety of a COA in the petitioner's favor', *Jennings v. Woodford*, 290 F.3d 1006, 1010 (9th Cir. 2012) (citing *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000) (en banc)), but no such doubt exists here.'" *Cornish v. Brazleton*, 2014 WL 1457768, *2 (C.D. Cal. Apr. 15, 2014). Reasonable jurists would not find it debateable that this purported section 2241 petition is actually a section 2255 petition. Nor would reasonable jurists find it debateable, in turn, that this Court lacks subject-matter jurisdiction over this petition because this Court did not sentence petitioner. In the posture of this case, then, this petition is not "adequate to deserve encouragement to proceed further" here. *See Barefoot v. Estelle*, 463 U.S. 880, 893 n.4, 103 S. Ct. 3383, 3385 n.4 (1983). The Court therefore will deny a certificate of appealability.

Accordingly, the Court orders as follows:

The Report and Recommendation is **ADOPTED**.

This action is **DISMISSED without prejudice** to any right which petitioner may have to re-file this habeas corpus petition in the federal court which sentenced him.

As required by Fed. R. Civ. P. 58(a), judgment will be entered by separate document.[1]

The Court **DECLINES** to issue a certificate of appealability.[2]

DATED: September 19, 2014

Valerie Baker Fairbank

HON. VALERIE BAKER FAIRBANK
UNITED STATES DISTRICT JUDGE

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[1] *See Jayne v. Sherman*, 706 F.3d 994, 1009 (9th Cir. 2013). "To comply with Rule 58, an order must (1) be self-contained and separate from the opinion; (2) note the relief granted; and (3) omit or substantially omit the district court's reasons for disposing of the claims." *Daley v. U.S. Attorney's Office*, 538 F. App'x 142, 143 (3d Cir. 2013) (per curiam) (citation omitted)).

[2] "FED. R. APP. P. 22(b)(1) provides in pertinent part that 'if the district judge has denied the certificate, the applicant may request a circuit judge to issue the certificate.'" *Elkins v. Foulkes*, 2014 WL 2615732, *14 n.5 (C.D. Cal. June 12, 2014) (quoting Rule and citing *Silva v. Woodford*, 279 F.3d 825, 832 (9th Cir. 2002)).